

SEP 14 2006

NOT FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

JASON SAUNDERS,

Plaintiff - Appellant,

v.

J W FAIRMAN, JR.; et al.,

Defendants - Appellees.

No. 05-15299

D.C. No. CV-02-05806-OWW

MEMORANDUM^{*}

Appeal from the United States District Court
for the Eastern District of California
Oliver W. Wanger, District Judge, Presiding

Submitted September 11, 2006 ^{**}

Before: PREGERSON, T.G. NELSON, and GRABER, Circuit Judges.

California state prisoner Jason Saunders appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action. We dismiss the appeal.

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

On February 4, 2005, the district court dismissed Saunders's action for failure to follow the court's order to effect service. On February 9, 2005, Saunders filed a notice of appeal. On August 29, 2006, the district court granted Saunders's motion for reconsideration, and vacated its order of February 4, 2005. Therefore, there is no longer a final decision to review. *See* 28 U.S.C. § 1291.

DISMISSED.